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HIGH COURT OF CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI JAGDISH BHALLA, Ag. CJ

W.P. No.2737 of 2003

PETITIONERS ORIGINAL DEFENDANT NO.1 TO 3

1. Dhirendra aged 40 years Son of Shivendranath Thakur
2. Mahendra aged 35 years son of Shivendranath Thakur
3. Savita aged 30 years D/o Shivendranath Thakur

All are resident of Saklor P.H.N. 35, R.N.M. Jaraud, Tahsil Simga, Distt. Raipur (C.G.)

VERSUS

RESPONDENTS ORIGINAL PLAINTIFF NO. 1 TO 5

1.A. Nandkumar aged 55 years Son of Narendra Nath Thakur

B. Lallu Kumar aged 42 years S/o Narendra Nath Thakur

2.A Saral Devi aged 50 years Widow of Damodar Mishra

B. Ganesh Kumar aged 33 years s/o Damodar Mishra

C. Dilip Kumar aged 29 years s/o Damodar Mishra

3. Suresh Kumar aged 60 years s/o Druvnath Thakur

4. Suman Thakur aged 55 years s/o Sarangnath

5. Kalinath aged 50 years s/o Jwalanath Thakur

All are resident of village Saklor, P.H.N. 32, R.N.M. Jaruad, Tahsil – Simga, Distt. Raipur (C.G.)

6. Shanti Bai aged 60 years D/o Shivendra Nath Thakur (Deceased)

7. Mohneshwar aged 55 years s/o Anupam Nath Thakur

All of resident of Saklor, PHN 35, R.N.M. Jaraud, Tahsil – Simga, Distt. Raipur (C.G.)

8. State of Madhya Pradesh (Now C.G.) Through – Collector, Raipur ORIGINAL DEFENDANT NO. 4 TO 6

Writ Petition under Article 227 of the Constitution of India.

Present: Shri Malay Kumar Bhaduri, counsel for the petitioners.
Shri M.D. Sharma, counsel for the respondents No. 1 to 5.

ORAL ORDER
(Passed on 08th August, 2007)

This writ petition is directed against the order dated 19-08-2003 passed by the Civil Judge Class – I, Baloda Bazar, District Raipur, whereby the application filed by the petitioner under Order 9 Rule 7 of the Code of Civil Procedure has been rejected. It is admitted case of the parties that after hearing the arguments, the judgment has already been reserved by the Court concerned. Since, judgment is reserved, the petitioner can only challenge the order in question after the judgment is pronounced, as has been held in the following cases of **Arjun Singh Vs. Mohindra Kumar and others A.I.R. 1964 SC 993 (V 51 C 128)** where it has been held vide para 17 as under :-

> "So far as the case before us is concerned the order under appeal cannot be sustained even on the basis that the finding recorded in disposing of an application under O. IX, R.7 would operate as res judicate when the same question of fact is raised in a subsequent application to set aside an ex parte decree under O. IX R. 13. This is because it is not disputed that in order to operate as res judicata, the court dealing with the first matter must had jurisdiction and competency to entertain and decide the issue, Adverting to the facts of the present appeal, this would primarily turn upon the proper construction of the terms of O.IX R.7. The opening words of that rule are, as already seen, 'Where the Court has adjourned the hearing of the suit ex parte'. Now, what do these words mean? Obviously they assume that there is to be a hearing on the date to which the suit stands adjourned. If the entirety of the 'hearing' of the suit has been completed and the Court being competent to pronounce the judgment then and there, adjourns the suit merely for the purpose of pronouncing judgment under O.XX R 1, there is clearly no adjournment of "the hearing" of the suit, for, there is nothing more to be heard in the suit. It was precisely this idea that was expressed by the learned Civil Judge when he stated

that having regard to the stage which the suit had reached the only proceeding in wich the appellant could participate was to hear the judgment pronounced and that on the terms of rules 6 and 7 he would permit him to do that. If, therefore the hearing was completed and the suit was not "adjourned for hearing", O. IX R. 7 could have no application and the matter would stand at the stage of O.IX R. 6 to be followed up by the passing of an ex parte decree making R. 13 the only provision in order IX applicable. If this were the correct position, it would automatically follow that the learned Civil Judge would have no jurisdiction to entertain the application dated May 31, 1958 purporting to be under O. IX R. 7, or pass any order thereon on the merits. This in its turn would lead to the result that the application under O. IX, R. 13 was not only competent but had to be heard on the merits without reference to the findings contained in the previous order."

The Apex Court further held in the matter of **Bhanu Kumar Jain Vs. Archana Kumar and another AIR 2005 SC 626** that:

"Order 9, Rule 7 of the Code postulates an application for allowing a defendant to be heard in answer to the suit when an order posting a suit for ex parte hearing was passed only in the event, the suit had not been heard as in a case where hearing of the suit was complete and the court had adjourned a suit for pronouncing the judgment, an application under Order 9, Rule 7 would not be maintainable. (See Arjun Singh Vs. Mohindra Kumar and others, AIR 1964 SC 993). The purpose and object of Order 9, Rule 7 of the Code has been explained by this Court in Vijay Kumar Madan and Others v. R.N. Gupta Technical Education Society and Others [(2002) 5 SCC 30] and Ramesh Chand Ardawatiya v. Anil Panjwani [(2003) 7 SCC 350]."

It has also been held by the Apex Court in the matter of **Lal Devi & Another Vs. Vaneeta Jain & Ors. AIR 2007 SC 1889**

"It is true that in view of the law laid down by this Court in Arjun Singh (supra) the learned District Judge could not have entertained an application under Order IX Rule 7 C.P.C."

In the light of above, no interference is warranted. Accordingly, the writ petition is disposed of. Interim order, if any, stands discharged.

Sd/-
Acting Chief Justice

Kamde